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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PRIVE VEGAS, LLC, a Florida limited liability
corporation; JUSTIN LEVINE, a Florida
resident; and FRANK TUCKER, a Nevada
Resident,

Plaintiffs,

v.

MICHAEL POLITZ, a Nevada resident;
DOES I through XV; and ROE
CORPORATIONS XVI through XXX,

Defendants.

Case No.: 2:08-cv-01104-LDG-RJJ

**DEFENDANT'S ANSWER
TO COMPLAINT**

(Electronic Filing)

Defendant MICHAEL POLITZ ("Poltz"), as his answer to the Complaint of Plaintiffs
Privé Vegas, LLC, Justin Levine, and Frank Tucker ("Plaintiffs"), responds to the factual
allegations of each numbered paragraph of the Complaint as follows:

PARTIES

1. Politz admits that a night club called Privé is located in the Planet Hollywood
Casino in Las Vegas, Nevada and that the night club provides music, food, drinks, and
entertainment to its customers. Politz lacks sufficient information to form a belief as to the truth
of the remaining allegations in this paragraph and therefore denies the same.

2. Politz lacks sufficient information to form a belief as to the truth of the allegations
in this paragraph and therefore denies the same.

JURISDICTION AND VENUE

GENERAL ALLEGATIONS

17. Politz denies the allegations of Paragraph 17 of the Complaint.

1 18. Poltz admits only that, on or about June 23, 2008, Privé filed suit in District
2 Court for Clark County, Nevada against four former employees, alleging breaches of their Privé
3 Employment Agreements, the Nevada Trade Secrets Act, and the Florida Trade Secrets Act.
4 Poltz lacks sufficient information to form a belief as to the truth of the remaining allegations in
5 this paragraph and therefore denies the same.

6 19. Poltz denies the allegations of Paragraph 19 of the Complaint.

7 20. Poltz admits that on or about July 23, 2008, Politz wrote and posted a story titled:
8 “Is the Prive Ship Starting to Sink?” that included the name “privé”. Politz denies the remaining
9 allegations in this paragraph, including but not limited to, any insinuation that Politz authored the
10 anonymous letter.

11 21. Poltz admits that on or about August 12, 2008, Politz wrote and posted on
12 thevegaseye.com, under the title “Prive Exposed,” content that referenced and included a link to
13 an anonymous letter. Politz denies the remaining allegations in this paragraph.

14 22. As this paragraph is an assertion of law and not a factual allegation, no response is
15 required. To the extent that a response is required, the allegations are denied.

16 23. Poltz denies the allegations of Paragraph 23 of the Complaint.

17 24. Poltz admits only that the Letter states: “We have resigned due to continual
18 harassment and working in a serious hostile & threatening environment.” Politz denies all
19 remaining allegations in this paragraph.

20 25. Poltz admits only that the Letter contains the quoted language. Politz denies all
21 remaining allegations in this paragraph.

22 26. Poltz admits only that the Letter states: “Many of our hourly waged employees
23 have been forced to work late hours at other clubs without pay and have been threatened by
24 management and the owner, Justin Levene.” Politz denies all remaining allegations in this
25 paragraph.

26 27. Poltz admits only that the Letter contains the quoted language. Politz denies all
27 remaining allegations in this paragraph.

28 ...

1 28. Poltz admits only that the Letter states: "First off there is a lot of marijuana
2 smoking taken place as well as Cocaine in the kitchen area and we believe it's also being sold
3 through management." Poltz denies all remaining allegations in this paragraph.

4 29. Poltz admits only that the Letter states: "When we brought this issue up at
5 meetings, we were told to simply shut up from one Managing Partner, Frank Tucker." Poltz
6 denies all remaining allegations of this paragraph.

7 30. Poltz admits only that the Letter states: "The other major problem was under
8 aged females coming to Prive.... One additional issue is serving these under aged female's
9 liquor." Poltz denies all remaining allegations of this paragraph.

10 31. Poltz admits only that the Letter states: "There were so many incidents that
11 many of the host had brought this to Justin Levene the owner's attention and all he stated was;
12 this is how we do it in Miami so mind your own business." Poltz denies all remaining
13 allegations of this paragraph.

14 32. Poltz admits only that the Letter states: "We even witnessed Mr. Leven sneaking
15 these girls through the kitchen." Poltz denies all remaining allegations of this paragraph.

16 33. Poltz admits that the Letter contains the quoted language, but denies all
17 remaining allegations of this paragraph.

18 34. Poltz admits only that the Letter states: "There were times we were ordered to
19 bring a bottle or drinks to a table of under aged girls and I personally refused to do so only to get
20 screamed at by Mr. Tucker." Poltz denies all remaining allegations of this paragraph.

21 35. Poltz admits only that the Letter states: "The major reason why many of us had
22 resigned is the fact that our tip money was never declared by management and we believe they
23 were stealing us blind." Poltz denies all remaining allegations of this paragraph.

24 36. Poltz admits only that the Letter states: "When we were hired, we were told that
25 all tip money would be transparent and we would receive a print out every week. Well after we
26 took the position everything had changed. Every time we asked for a print out, Mr. Tucker told
27 us to shut up and get back to work." Poltz denies all remaining allegations of this paragraph.

28 ...

1 37. Poltz admits only that the Letter states: "We know for a fact they have been
2 stealing our tips." Politz denies all remaining allegations of this paragraph.

3 38. Poltz admits that the Letter contains the quoted language, but denies all
4 remaining allegations of this paragraph.

5 39. Poltz admits that the name "privé", beneath the international symbol for "no" (a
6 red circle with a diagonal line extending inside the circle from the top left "corner" to the bottom
7 right "corner" of the circle), appeared below the title for the content. Politz denies the remaining
8 allegations and characterizations in this paragraph.

9 40. Poltz admits that Politz provided the title for the content. Politz denies the
10 remaining allegations and characterizations in this paragraph.

11 41. Poltz denies the allegations of Paragraph 41 of the Complaint.

12 42. Poltz denies the allegations of Paragraph 42 of the Complaint.

13 43. Poltz denies the allegations of Paragraph 43 of the Complaint.

14 44. Poltz denies the allegations of Paragraph 44 of the Complaint.

15 45/46. No response to Paragraph 45/46 is required as Plaintiffs have asserted
16 inappropriate Doe/Roe Defendant allegations. To the extent that a response is required,
17 inasmuch as the Doe and Roe defendants have not been identified by Plaintiffs, Politz lacks
18 sufficient information to form a belief as to the truth of the allegation regarding the employment
19 and/or agent status of the Doe and Roe defendants and therefore denies the same. Politz denies
20 the remaining allegations of this (combined) paragraph.

21 47. Poltz admits that, on or about August 14, 2008, an attorney for Privé issued a
22 letter of objection to Politz. The letter speaks for itself. Politz denies the remaining allegations
23 and characterizations of this paragraph.

24 48. Poltz admits that the Objection Letter demanded retraction of certain content and
25 that an apology be published. The letter speaks for itself. Politz denies the remaining allegations
26 of this paragraph, including that the content was libelous.

27 49. Poltz admits that Politz received the letter on August 14, 2008. Politz lacks
28 sufficient information to form a belief as to the truth of the allegations in this paragraph and

therefore denies the same.

50. Politz admits that, on or about August 18, 2008, Politz contacted counsel for Privé. Politz denies all remaining allegations of this paragraph.

51. Politz admits that, on or about August 18, 2008, Politz updated the website to state: “[W]e don’t endorse the anonymous letter or anything that is stated within the letter. The publishing of this letter does not reflect the opinions of anyone working here. That being said, I do have 4 sources that came to us unsolicited and are willing to verify this and many more allegations on the record.” Politz denies all remaining allegations of this paragraph.

52. Politz admits that, on or about August 19, 2008, Politz sent an e-mail to counsel for Privé. Politz further states that the e-mail speaks for itself, and denies all remaining allegations and characterizations of this paragraph.

53. Politz admits that the content referenced in the Complaint remained at thevegaseye.com website as of August 20, 2008. Politz denies the remaining allegations and characterizations of this paragraph.

FIRST CLAIM FOR RELIEF

(Trademark Infringement and Disparagement Under Lanham Act, 15 USC §1125(a)(c))

54. Politz hereby incorporates by reference his responses to the preceding paragraphs.

55. Politz denies the allegations of Paragraph 55 of the Complaint.

56. Politz denies the allegations of Paragraph 56 of the Complaint.

57. Politz denies the allegations of Paragraph 57 of the Complaint.

58. Politz denies the allegations of Paragraph 58 of the Complaint.

59. Politz denies the allegations of Paragraph 59 of the Complaint.

60. Politz denies the allegations of Paragraph 60 of the Complaint.

61. Politz denies the allegations of Paragraph 61 of the Complaint.

62. Politz denies the allegations of Paragraph 62 of the Complaint.

...

...

SECOND CLAIM FOR RELIEF

(Defamation Per Se)

63. Politz hereby incorporates by reference his responses to the preceding paragraphs.

64. Politz denies the allegations of Paragraph 64 of the Complaint.

65. Politz admits that the statements concerning Privé were available to third parties who accessed thevegaseye.com website. Politz denies the remaining allegations and characterizations of this paragraph.

66. Politz denies the allegations of Paragraph 66 of the Complaint.

67. Politz denies the allegations of Paragraph 67 of the Complaint.

68. Politz denies the allegations of Paragraph 68 of the Complaint.

69. Politz denies the allegations of Paragraph 69 of the Complaint.

70. Politz denies the allegations of Paragraph 70 of the Complaint.

71. Politz denies the allegations of Paragraph 71 of the Complaint.

72. Politz denies the allegations of Paragraph 72 of the Complaint.

73. Politz denies the allegations of Paragraph 73 of the Complaint.

74. Paragraph 74 states a legal conclusion to which no response is required. To the extent that a response is required, Politz denies the allegations of Paragraph 74.

75. Politz denies the allegations of Paragraph 75 of the Complaint.

76. Paragraph 76 states a legal conclusion to which no response is required. To the extent that a response is required, Politz denies the allegations of Paragraph 76.

77. Politz denies the allegations of Paragraph 77 of the Complaint.

THIRD CLAIM FOR RELIEF

(Commercial Defamation Per Se)

78. Politz hereby incorporates by reference his responses to the preceding paragraphs.

79. Politz denies the allegations of Paragraph 79 of the Complaint.

80. Politz denies the allegations of Paragraph 80 of the Complaint.

...

92. Politz denies the allegations of Paragraph 92 of the Complaint.

(Intentional Interference with Existing Business Relations)

96. Politz denies the allegations of Paragraph 96 of the Complaint.

1 97. Politz denies the allegations of Paragraph 97 of the Complaint.

2 98. Politz denies the allegations of Paragraph 98 of the Complaint.

3 99. Politz denies the allegations of Paragraph 99 of the Complaint.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Intentional Interference with Prospective Business)**

6 100. Politz hereby incorporates by reference his responses to the preceding paragraphs.

7 101. Politz lacks sufficient information to form a belief as to the truth of the allegations
8 in this paragraph and therefore denies the same.

9 102. Politz denies the allegations of Paragraph 102 of the Complaint.

10 103. Politz denies the allegations of Paragraph 103 of the Complaint.

11 104. Politz denies the allegations of Paragraph 104 of the Complaint.

12 105. Politz denies the allegations of Paragraph 105 of the Complaint.

13 106. Politz denies the allegations of Paragraph 106 of the Complaint.

14 107. Politz denies the allegations of Paragraph 107 of the Complaint.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Extortion)**

17 108. Politz hereby incorporates by reference his responses to the preceding paragraphs.

18 109. Politz denies the allegations of Paragraph 109 of the Complaint.

19 110. Politz denies the allegations of Paragraph 110 of the Complaint.

20 111. Politz denies the allegations of Paragraph 111 of the Complaint.

21 112. Politz denies the allegations of Paragraph 112 of the Complaint.

22 **AFFIRMATIVE DEFENSES**

23 Politz asserts the following non-exclusive list of defenses to this action. These defenses
24 have been labeled as "Affirmative" defenses regardless of whether, as a matter of law, such
25 defenses are truly affirmative defenses. Such designation should in no way be construed to
26 constitute a concession on the part of Politz that he bears the burden of proof to establish such
27 defenses.
28

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- 1 1. The Complaint fails to state a claim upon which relief may be granted.
- 2 2. Plaintiffs' trademark disparagement claim should be dismissed because trademark
- 3 disparagement is not a claim under the Lanham Act.
- 4 3. Plaintiffs' trademark dilution claim should be dismissed because prive is not a
- 5 famous trademark and accordingly cannot be diluted under the Lanham Act.
- 6 4. Plaintiffs' trademark infringement and disparagement claims are barred by fair
- 7 use.
- 8 5. Plaintiff's trademark infringement and disparagement claims are barred because
- 9 there is no likelihood of confusion.
- 10 6. Plaintiffs' defamation claims are barred because, even if the statements could be
- 11 attributed to Politz, they are not defamatory.
- 12 7. Plaintiffs' defamation claims are barred because, even if the statements could be
- 13 attributed to Politz, they are true.
- 14 8. Plaintiffs' claims are barred because of unclean hands.
- 15 9. Plaintiffs lack standing to seek redress for the injuries alleged in the Complaint.
- 16 10. Plaintiffs' claims are barred because they did not incur any injury or damages
- 17 cognizable at law.
- 18 11. Plaintiffs are not entitled to punitive damages under the applicable law.
- 19 12. Plaintiffs have failed to plead special damages with particularity as is required by
- 20 the Federal Rules of Civil Procedure.
- 21 13. Plaintiffs' claims are barred by the Communications Decency Act, § 230, and the
- 22 immunity provided to Politz thereunder.
- 23 14. Plaintiffs' defamation claims are barred because they are public figures and may
- 24 not recover in the absence of actual malice.
- 25 15. Plaintiffs' defamation claims are barred because Politz is a media defendant and
- 26 Plaintiffs cannot recover in the absence of actual malice.
- 27 16. Plaintiffs' defamation claims are barred because the statements at issue on
- 28 TheVegasEye.com are absolutely privileged.

17. Plaintiffs' defamation claims are barred because the statements at issue are privileged pursuant to the Fair Reporting Privilege.

18. Plaintiffs' defamation claims are barred because the statements at issue are statements of opinion, and therefore not defamatory.

19. Plaintiffs' claims are barred by principles of assumption of risk, contributory negligence and/or comparative fault.

20. Plaintiffs are barred from obtaining relief for any claim by reason of their failure to mitigate its damages, if any.

21. Plaintiffs are barred from any recovery under the doctrine of laches, estoppel, and/or waiver.

22. All possible affirmative defenses may not have been alleged herein. Therefore, Politz reserves the right to amend this Answer to allege additional affirmative defenses at a later date.

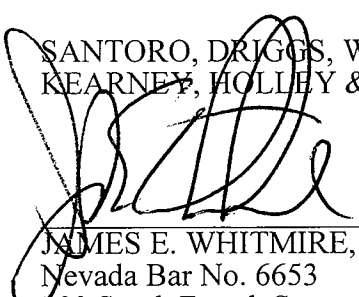
WHEREFORE, having answered Plaintiffs' Complaint, Politz requests that this Court enter judgment in favor of Politz on all counts of the Complaint, award Politz his costs and attorney's fees, and grant Politz such other relief in favor of Politz and against Plaintiffs as deemed just and equitable by the Court.

JURY DEMAND

Politz demands a trial by jury on all issues.

Dated this 6 day of October, 2008.

SANTORO, DRIGGS, WALCH,
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